

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 TOM MIDDLETON, GAIL MIDDLETON,)
5 BOB RHEA, LINDA RHEA, EUGENE)
6 PROCKL, and KATHERINE PROCKL,)
7)
8 Petitioners,)

9)
10 vs.)

11) LUBA No. 95-226
12 JOSEPHINE COUNTY,)
13) FINAL OPINION
14 Respondent,) AND ORDER
15)

16 and)

17)
18 JACK SAUER and JOSEPHINE SAUER,)
19)
20 Intervenors-Respondent.)

21
22
23 Appeal from Josephine County.

24
25 James R. Dole, Grants Pass, filed the petition for
26 review and argued on behalf of petitioners. With him on the
27 brief was Schultz, Salisbury, Cauble, Bersteeg & Dole.

28
29 Gloria M. Roy, Special Counsel, Grants Pass, filed a
30 response brief and argued on behalf of respondent.

31
32 Duane Wm. Schultz, Grants Pass, filed a response brief
33 and argued on behalf of intervenors-respondent.

34
35 HANNA, Referee; LIVINGSTON, Chief Referee,
36 participated in the decision.

37
38 REMANDED 08/07/96

39
40 You are entitled to judicial review of this Order.
41 Judicial review is governed by the provisions of ORS
42 197.850.

1 Opinion by Hanna.

2 **NATURE OF THE DECISION**

3 Petitioners appeal the county's approval of a
4 comprehensive plan amendment and zone change.

5 **MOTION TO INTERVENE**

6 Jack and Josephine Sauer (intervenors), the applicants
7 below, move to intervene in this proceeding on the side of
8 the county. There is no objection to the motion, and it is
9 allowed.

10 **FACTS**

11 Petitioners appeal the county board of commissioners'
12 (commissioners) approval of a comprehensive plan amendment
13 changing the designation from Forest Resource to Commercial
14 and a zone change from Forest Commercial (CF) to Limited
15 Development (LD) for 17 acres of a 77-acre parcel. The plan
16 amendment adopts an exception to Statewide Planning Goal 4
17 (Forest Lands).

18 The subject parcel, known as the Kerby Racetrack, has
19 historically been used for motorcycle racing without benefit
20 of a conditional use permit.¹ The amendment would allow
21 motorcycle, bicycle, go-cart, and, potentially, stock car
22 racing on two separate racetracks. The approved use

¹In Tice v. Josephine County, 21 Or LUBA 371 (1991), we reversed a conditional use permit approval to allow a motorcycle track on this property because it was not allowed under the plan designation and zoning regulations.

1 includes parking, concessions and sanitation facilities for
2 participants and paying attendees. The challenged decision
3 describes degradation of the soils as a result of the
4 property's historic, unauthorized use for motorcycle racing.

5 The challenged decision describes the surrounding land
6 as "forest and farm in nature." The properties surrounding
7 the subject parcel include: BLM forestland to the north; a
8 woodlot zoned resource-residential to the northwest; a 120-
9 acre woodlot resource parcel to the east; property zoned for
10 exclusive farm use to the west; a woodlot zoned forest
11 commercial to the south; and several residences located in
12 the immediate area. The subject parcel was logged 60 years
13 ago and again 10 years ago.

14 Following denial of the application by the planning
15 department and planning commission, intervenors modified the
16 zone change request from Tourist Commercial to Limited
17 Development. The board of commissioners approved the
18 application as modified. This appeal followed.

19 **APPLICABLE LAW**

20 The challenged decision was approved under ORS 197.732,
21 OAR 660-04-020 and OAR 660-04-022.

22 ORS 197.732 states, in relevant part:

23 "(1) A local government may adopt an exception to
24 a goal if:

25 "* * * * *

26 "(c) The following standards are met:

1 "(A) Reasons justify why the state policy
2 embodied in the applicable goals
3 should not apply;

4 "(B) Areas which do not require a new
5 exception cannot reasonably
6 accommodate the use;

7 "(C) The long term environmental,
8 economic, social and energy
9 consequences resulting from the use
10 at the proposed site with measures
11 designed to reduce adverse impacts
12 are not significantly more adverse
13 than would typically result from the
14 same proposal being located in areas
15 requiring a goal exception other
16 than the proposed site; and

17 "(D) The proposed uses are compatible
18 with other adjacent uses or will be
19 so rendered through measures
20 designed to reduce adverse impacts."

21 In order to justify the Goal 4 exception to allow the
22 proposed use, intervenors are required to satisfy the
23 reasons exception criteria of OAR 660-04-022(1) as follows:

24 "* * * * *

25 "(a) There is a demonstrated need for the
26 proposed use or activity, based on one
27 or more of the requirements of Statewide
28 Goals 3 to 19; and either

29 "(b) A resource upon which the proposed use
30 or activity is dependent can be
31 reasonably obtained only at the proposed
32 exception site and the use or activity
33 requires a location near the resource.
34 An exception based on this subsection
35 must include an analysis of the market
36 area to be served by the proposed
37 activity. That analysis must
38 demonstrate that the proposed exception
39 site is the only one within that market

1 area at which the resource depended upon
2 can reasonably be obtained; or

3 "(c) The proposed use or activity has special
4 features or qualities that necessitate
5 its location on or near the proposed
6 exception site."

7 OAR 660-04-020 sets forth the factors to be addressed
8 in order to justify a reasons exception under OAR 660-04-
9 022. These factors are quoted and discussed under the
10 third, fourth and fifth assignments of error, infra.

11 **SIXTH ASSIGNMENT OF ERROR**

12 Petitioners contend the county violated ORS 197.732(5)
13 because the notices of the public hearings before the
14 planning commission and the commissioners did not advise
15 interested parties that they must offer alternative sites in
16 order for alternative sites to be specifically evaluated.
17 Petitioners contend further that they were substantially
18 prejudiced by this violation because they could not
19 understand what was required to adequately raise the issue
20 of a reasons exception.

21 ORS 197.732(5) provides that "[e]ach notice of a public
22 hearing on a proposed exception shall specifically note that
23 a goal exception is proposed and shall summarize the issues
24 in an understandable manner."

25 Two separate notices were sent to petitioners. The
26 "criteria" sections of notices sent on February 17, 1995,
27 for the planning commission hearing, and May 18, 1995 for
28 the commissioners' hearing are identical and specify the

1 applicable administrative rules, state goals, county goals,
2 policies and Josephine County Rural Land Development Code
3 (LZO) sections.² Record 335, 449. The notice does not
4 contain a summary of the issues involved in the proposed
5 hearings. The notice simply states that OAR 660-04-022
6 would be applicable and identify that section as pertaining
7 to "reasons exceptions."

8 The county and intervenors contend that the
9 requirements of ORS 197.732(5) were met because the notice
10 contains the requisite summary and explain that a "reasons
11 exception" was being requested. Intervenors and the county
12 appear to argue that because reference to the applicable
13 criteria was contained in the notice, a prudent person would
14 be apprised of the relevant issues by reading those
15 criteria.

16 ORS 197.732(5) imposes notice requirements in addition
17 to those specified in ORS 197.763. Where a goal exception
18 is proposed, mere reference to the criteria, as allowed
19 under ORS 197.763 does not satisfy the summary statement
20 requirement of ORS 197.732(5). At a minimum, ORS 197.732(5)
21 requires a brief summary of the issues involved in the
22 proposed exception, in addition to the list of the
23 applicable criteria required by ORS 197.763(3)(b). The
24 county's notice failed to include the former. The county's

²Our review is only of the commissioners' adoption of the challenged decision.

1 notice did not comply with the requirements of
2 ORS 197.732(5).

3 ORS 197.732(5) contains procedural requirements.
4 Although the county's notice was inadequate, we may not
5 reverse or remand a decision based on procedural error
6 unless the petitioner's substantial rights are prejudiced.
7 Furler v. Coos County, 27 Or LUBA 546, 550 (1994); Mazeski
8 v. Wasco County, 26 Or LUBA 226, 234 (1993); Caine v.
9 Tillamook County, 22 Or LUBA 687, 694 (1992). Petitioners
10 contend that their substantial rights have been prejudiced
11 in that they were unable to "adequately properly address and
12 argue the issues raised herein." Petition for Review 22.
13 Petitioners argue also that their substantial rights were
14 prejudiced because they were not aware that they were
15 required to identify alternative sites with reasonable
16 specificity. Petition for Review 23.

17 The record demonstrates that petitioners were aware of
18 the applicable criteria and that they effectively
19 participated at the local level. Record 70-74. The minutes
20 of the June 7, 1995 weekly business session reveal that
21 petitioners were apprised of the applicable criteria.
22 Record 81-82. In addition, the record contains an "Order of
23 Procedure" which lists the applicable criteria for the
24 applicant's request, the hearing procedural framework, time
25 frames, and lists the four factors relevant to exception

1 criteria.³ Under the second and third factors labeled
2 "Existing Exception Areas Cannot Reasonably Accommodate The
3 Use" and "Other Resource Sites Are Not More Suitable For the
4 Use" it is noted that "[a] broad review is permitted unless
5 a legitimate alternative site is specifically identified."
6 Record 81.

7 The fact that petitioners discussed the applicable
8 criteria in their oral testimony and were put on notice that
9 alternative sites had to be specifically identified in order
10 to be considered indicates that their rights were not
11 substantially prejudiced.⁴

12 The sixth assignment of error is denied.

13 **FIRST ASSIGNMENT OF ERROR**

14 Petitioners assert that the county's conclusion that
15 the zone change request satisfies OAR 660-04-022
16 misconstrues the applicable law and is based on insufficient
17 evidence. Essentially, petitioners claim that the county
18 has not sufficiently demonstrated that a "need" exists which
19 would justify an exception to Goal 4 under OAR 660-04-022.

20 Petitioners argue that in order to demonstrate "need",
21 the county must establish that there is a market demand for

³We understand that the "Order of Procedure" was available at the June 7, 1995 hearing.

⁴Even if the petitioners first became aware of the "broad review" possibility at the June 7, 1995 hearing, the record remained open for seven additional days during which they could submit additional information.

1 the proposed use and that the county is unable to satisfy
2 the requirements of one or more of Goals 3 through 19.

3 We have stated previously with regard to the "need"
4 requirement of OAR 660-04-022(1)(a):

5 "While market demand alone does not establish
6 'need,' * * * market demand can provide some
7 evidence of a 'need' for a use not otherwise
8 allowed by a resource goal, if other relevant
9 factors are present. Specifically, we believe OAR
10 660-04-022(1)(a) contemplates that the 'need'
11 requirement may be met based on a showing of (1)
12 market demand for the proposed use, and (2) that
13 the county cannot satisfy its obligations under
14 one or more of Goals 3-19, or the requirements of
15 its acknowledged comprehensive plan, without
16 accommodating the proposed use at the proposed
17 location. * * *" 1000 Friends of Oregon v. Marion
18 County, 18 Or LUBA 408, 413 (1989).

19 We reiterated this standard in Pacific Rivers Council,
20 Inc. v. Lane County, 26 Or LUBA 323, 338 (1993) when we
21 stated that market demand alone will not suffice to
22 demonstrate a 'need' for the proposed use; the county must
23 also demonstrate that it is unable to "satisfy its
24 obligations under one or more of Goals 3-19 or the
25 requirements of its acknowledged plan."

26 The county's findings indicate that a market demand
27 exists for the proposed racetrack, and that it could produce
28 economic benefit to the area. The findings also reflect the
29 county's desire to diversify the local economy and develop
30 alternative tourist attractions. In addition, the county
31 points out that the county has been designated as an federal
32 enterprise zone.

1 Respondents may be correct that economic
2 diversification and additional tourist attractions would be
3 economically beneficial to the county and would be
4 consistent with Goals 8 and 9. However, the county's
5 reliance on those factors does not demonstrate that it is
6 unable to satisfy its obligations under one or more of Goals
7 3-19 absent the proposed exception. Without such a showing,
8 the county has not demonstrated that a "need" exists,
9 justifying an exception to Goal 4.⁵

10 The county also concludes that "[a]pproval of this
11 application will result in an economic benefit to the local
12 economy." Record 30. The county bases this conclusion on
13 findings suggesting the need for economic diversification
14 and increased destination tourism. However, while the
15 challenged decision states that "[i]t was concluded that the
16 proposed racetrack use will provide major economic benefits
17 for the Southern Oregon area," it does not explain how this
18 conclusion was reached. Record 23. Furthermore, the county
19 does not establish a nexus between the "need" for economic
20 development and the proposed use. The county's assertion
21 that the proposed use will fulfill the stated "needs" of the

⁵While "demand" may exist for a particular use, "demand" alone is not enough to satisfy the requirements of OAR 660-04-020. As the Court of Appeals noted in Still v. Marion County, 42 Or App 115, 122, 600 P2d 433 (1979), "[a] market demand for rural residential development, however, does not constitute a 'need' for it, as that word is used in Goal #2. * * * Land is not excepted from the Agricultural Goal merely because somebody wants to buy it for a house."

1 county does not satisfy OAR 660-o4-022(1)(a).⁶

2 The first assignment of error is sustained.

3 **THIRD ASSIGNMENT OF ERROR**

4 Petitioners argue that the county failed to properly
5 compare alternative sites, as required by ORS
6 197.732(1)(c)(B) and OAR 660-04-020(2)(b)(A) to (C), to
7 determine if other sites could reasonably accommodate the
8 proposed use without an exception. Petitioners further
9 argue that even if the analysis were adequate, the record
10 does not contain sufficient evidence to conclude that no
11 alternative sites exist which could reasonably accommodate
12 the proposed use and would not require an exception.

13 OAR 660-04-020(2)(b) to (c) provides, in relevant part:

14 "(A) The exception shall indicate on a map or
15 otherwise describe the location of possible
16 alternative areas considered for the use,
17 which do not require a new exception. The
18 area for which the exception is taken shall
19 be identified;

20 "(B) To show why the particular site is justified,
21 it is necessary to discuss why other areas
22 which do not require a new exception cannot
23 reasonably accommodate the proposed use.
24 Economic factors can be considered along with
25 other relevant factors in determining that
26 the use cannot reasonably be accommodated in
27 other areas. Under the alternative factor
28 the following questions shall be addressed:

29 "(i) Can the proposed use be reasonably

⁶Because we decide that the county's findings are inadequate to support the conclusion that an exception is necessary, it is not necessary for us to decide whether the conclusion is supported by substantial evidence.

1 accommodated on nonresource land that
2 would not require an exception,
3 including increasing the density of uses
4 on nonresource land? If not, why not?

5 "(ii) Can the proposed use be reasonably
6 accommodated on resource land that is
7 already irrevocably committed to
8 nonresource uses, not allowed by the
9 applicable Goal, including resource land
10 in existing rural centers, or by
11 increasing the density of uses on
12 committed lands? If not, why not?

13 "(iii) Can the proposed use be reasonably
14 accommodated inside an urban growth
15 boundary? If not, why not?

16 "(C) This alternative areas standard can be met by
17 a broad review of similar types of areas
18 rather than a review of specific alternative
19 sites. * * *"

20 Regarding the requirements of OAR 660-04-020(2)(b)(A)-
21 (C), the findings state, in part:

22 "A search for adequate alternative sites (in
23 existing exception areas, in urban areas, and in
24 the entire county) for the proposed use was
25 undertaken by the applicant. A database search of
26 the county assessor's records was done. The
27 search parameters included all zones * * *, lots
28 between 15 and 40 acres in size, and with
29 improvements of less than \$10,000. The search
30 resulted in a list of slightly less than 2,400
31 potential tax lots to review. A random sample was
32 selected from each zoning, resulting in a list of
33 approximately 200 tax lots. A plat map was
34 obtained for each of these, and the lot was
35 reviewed for density of surrounding homes and
36 access. In each zone, 5 to 10 representative lots
37 that appeared to have the best chance of being
38 used for the proposed use were then analyzed in
39 depth (fairly low density of homes, good access).
40 For each in depth analysis, the topography map and
41 soil map were reviewed. These lots were then

1 analyzed for slope, soil qualities, drainage,
2 resource potential, residential density,
3 accessibility and distance to services. Any lot
4 that appeared to have some potential for placement
5 of a track was visited by the applicant's
6 representatives and analyzed for actual racetrack
7 use. The final on-site visits included 20 tax
8 lots scattered throughout Josephine County."
9 Record 25.

10 * * * * *

11 "The search parameters were believed to be
12 adequate and reasonable under Reasons Exception
13 criteria. The applicant could not reasonably be
14 expected to purchase an excessive quantity acreage
15 for the use, or to remove an existing substantial
16 use on committed property." Record 25.

17 **A. Findings for Broad Alternative Sites Analysis**

18 Upon review of a decision approving an exception, this
19 board must determine whether the local government's findings
20 and reasons demonstrate that an exception is justified.
21 ORS 197.732(6)(b). Petitioners assert that the county's
22 findings are inadequate and do not meet the requirements of
23 ORS 197.732 and OAR 660-04-022(2)(b). We agree.

24 First, in determining the parameters of the alternative
25 sites analysis, the county failed to explain why the three
26 home per 160-acre density, adopted by intervenors was a
27 reasonable limitation. Other than the fact that the
28 intervenor's property lies within such density, there is no
29 discussion of why that density was chosen or why it was
30 appropriate. There are no findings suggesting that four
31 homes or any other number of homes would be unreasonable or
32 inappropriate.

1 The county also concluded that a 40-acre maximum was a
2 reasonable size limitation because larger sites would be
3 "excessive." Record 25. The county provides no discussion
4 of what is meant by the term "excessive" or why a 40-acre
5 maximum lot size was chosen when the subject property itself
6 is 77 acres. The findings fail to explain why it is
7 unreasonable to examine lots larger than 40 acres, and yet
8 at the same time conclude that intervenors' 77-acre parcel
9 is appropriate for the proposed use. It is also noted that
10 the subject property was not among the 2,400 lots because it
11 did not contain the requisite characteristics. Thus, by
12 intervenors' own criteria, the subject property does not
13 qualify as a suitable site.

14 The findings also fail to explain why it is adequate
15 and reasonable to limit consideration of other potential
16 alternative sites to those with improvements not greater
17 than \$10,000. The findings do not explain why it is
18 unreasonable for intervenors to remove or use an improvement
19 valued at greater than \$10,000. There is no discussion of
20 why removal of such improvements would be necessary.
21 Neither is there discussion of whether some existing
22 improvements could be compatible with the proposed use or
23 used in tandem with the proposed use. The findings indicate
24 that there is a caretaker residence, presumably valued at
25 greater than \$10,000, on the subject property, but fail to
26 explain why a similar residence would be inappropriate on

1 alternative sites if its value exceeded \$10,000.

2 The findings also fail to adequately explain why flat
3 parcels cannot be altered to satisfy the requirements of the
4 racetrack.

5 Intervenors and the county argue that the challenged
6 decision adequately addresses alternative sites. The county
7 cites 1000 Friends of Oregon v. Marion County, 116 Or App
8 584 (1992) for the proposition that petitioner's challenge
9 "goes to the weight of the evidence, not its sufficiency."
10 Respondent's Brief 13.

11 The county's reliance on 1000 Friends of Oregon v.
12 Marion County is misplaced. Where, as in this assignment of
13 error, we examine the adequacy of findings, we are not
14 engaged in a substantial evidence inquiry. Where the local
15 government's findings are conclusory and offer little or no
16 support for the conclusions drawn, the decision will be
17 remanded on that basis alone, and this Board need not reach
18 the substantial evidence challenges. See DLCD v. Columbia
19 County, 16 Or LUBA 467, 471 (1988).

20 This subassignment of error is sustained.

21 **B. Specific Alternative Sites Analysis**

22 OAR 660-04-020(2)(b) requires the county to examine
23 alternative areas that do not require an exception. Under
24 that section, the alternative areas standard can be met by a
25 broad review of similar types of areas rather than a review
26 of specific alternative sites. Petitioners argue that a

1 "broad review is unjustified in this case." Petition for
2 Review 16. Petitioners similarly contend that while it may
3 be permissible to narrow the search, it

4 "* * * was wrong for Josephine County to then
5 accept a 'random sampling' of the 2,400 sites.
6 Obviously it resulted in a 'hit-or-miss'
7 determination of whether in fact the county has a
8 reasonable alternative to this site. The fact
9 that it would be burdensome to require a specific
10 analysis of the 2,400 alternatives does not
11 justify a shortcut." Id.

12 If petitioners propose that the county is required to
13 perform a site specific analysis of every parcel identified
14 in the preliminary study, petitioners misconstrue the
15 requirements of OAR 660-04-020(2)(b). By its own terms, OAR
16 660-04-020(2)(b)(C) requires a site specific inquiry only
17 when another party can identify specific sites that can more
18 reasonably accommodate the use:

19 "* * * A detailed evaluation of specific
20 alternative sites is thus not required unless such
21 sites are specifically described with facts to
22 support the assertion that the sites are more
23 reasonable by another party during the local
24 exceptions proceeding."

25 Although alternative sites were discussed in the record
26 and the challenged decision, petitioners "do not assert that
27 locating the proposed use at any of these sites would
28 produce significantly fewer impacts, identify where such an
29 assertion was made below, or cite facts in the record
30 supporting such an assertion." Pacific Rivers Council
31 supra, 26 Or LUBA at 347-48. The "Alternative Sites

1 Analysis" prepared by the applicant's agent and relied upon
2 by the county is the type of broad review allowed by OAR
3 660-04-022(2)(b)(C). Unless specific alternative sites are
4 identified by another party, site specific analysis is not
5 required.

6 This subassignment of error is denied.

7 **C. Sunny Valley and Illinois Airport Racetracks**

8 Petitioners also assert that the county's findings that
9 two local racetracks are inadequate for the proposed use are
10 "insufficient in comparing the impacts and potential of two
11 existing racetracks to the exception site." Petition for
12 Review 18.⁷

13 Petitioners assert that the county's findings are
14 inadequate to support the conclusion that the two existing
15 racetracks are inadequate for the proposed use. We agree
16 with petitioners. Factual Determinations 106, 107 and 108
17 provide:

18 "106. The defunct Sunny Valley racetrack and the
19 proposed racetrack at the Illinois Valley
20 Airport were visited. The Sunny Valley
21 racetrack was small, and appeared to be
22 partially terraformed. It drained directly
23 into Graves Creek with no significant
24 barriers. The Illinois Valley Airport area
25 is flat, and it was not allowed at the time
26 it was proposed because endangered plant
27 species were located on-site.

⁷The challenged decision states that it does not evaluate alternative sites. However, it does in fact set forth some analyses of several potential alternative sites. Record 25, 29 and 30.

1 "107. * * * a motorcycle racer, testified that the
2 terrain at the Sunny Valley track was not
3 adequate, and indicated that was why it is
4 not currently in operation. He also
5 indicated that there is a trailer park
6 within 300' of the track area.

7 "108. Neither the Sunny Valley or the Illinois
8 Airport track site were adequate or
9 reasonable for the proposed use." Record
10 25-26.

11 With regard to the terrain, as mentioned above, the county
12 has failed to explain in its findings why flat parcels
13 cannot be altered to conform to the motocross requirements.
14 Determination 106 fails to explain why drainage into Graves
15 Creek is a problem or, if it is, why the problem cannot be
16 alleviated. Nor does it explain whether endangered plant
17 species still exist at the Illinois Valley Airport site or
18 whether there are mitigation measures available. Similarly,
19 the county fails to explain whether the Sunny Valley track
20 could be enlarged, or why its size is prohibitive.

21 This subassignment of error is sustained.

22 The third assignment of error is sustained, in part.

23 **SECOND ASSIGNMENT OF ERROR**

24 Petitioners assert that the county failed to explain,
25 as required by ORS 197.732(1)(c)(A) and OAR 660-04-
26 020(2)(a), why the proposed use requires the use of resource
27 land. Petitioners also argue that the county has failed to
28 demonstrate why 17 acres are required to be excepted when
29 the use, according to petitioners, requires only 9 to 11
30 acres.

1 **A. Resource Land**

2 Regarding the use of resource land, the county
3 concluded:

4 "The proposed use is best located on resource
5 land, due to the outdoor recreational nature of
6 the activity, the need for a varied terrain and
7 dirt base, the need for a minimum of 15-17 acres
8 for the entire proposed use (oval tract, motocross
9 track, parking), and to reduce potential of
10 impacts on surrounding residences from noise that
11 may be generated. The purpose of farm and forest
12 resource land in Josephine County is for farming
13 and forestry, and residential use is low-density
14 and secondary in importance. Therefore, noise
15 impacts on surrounding residential owners is
16 logically less than it would be in a high density
17 residential area. While industrial or open space
18 land (Serpentine, for instance) could also be low-
19 density and could have the topography and soil
20 needed for a track of the caliber proposed, the
21 2,400 lot sample study did not find any lots in
22 these zonings that were within the density and
23 size parameters and available for the use. The
24 reasons clearly indicate the need to locate the
25 proposed use on resource land." Record 29.

26 The county's findings indicate that the proposed use
27 requires (1) low-density; (2) varied topography with dirt
28 base, and; (3) 15 to 17 acre minimum size. The county
29 asserts that the proposed use must be placed on land having
30 these attributes. The county does not however, purport to
31 claim that only resource land suits these criteria. The
32 county has not demonstrated that the proposed use requires
33 the use of resource land, as required by OAR 660-04-
34 020(2)(a).

35 This subassignment of error is sustained.

1 **B. Size of Exception Area**

2 OAR 660-02-020(2)(a) requires that the county explain
3 why it chose to except the amount of land that it did. Dyke
4 v. Clatsop County, 18 Or LUBA 787, 793 (1990). The county's
5 findings regarding the size of the exception area are brief.
6 They state that the proposed use requires "a minimum of 15-
7 17 acres for the entire proposed use (oval track, motocross
8 track, parking), and to reduce the impacts on surrounding
9 residences from noise that may be generated." Record 29.
10 In addition to the county's findings, the record indicates
11 in at least two other places that 17 acres are required to
12 accommodate the proposed facilities. Record 169, 499.
13 Based upon the information contained in the record, the
14 county concluded that a minimum of 17 acres would be
15 required to satisfy the needs of the applicant. The county
16 is required to do no more.

17 This subassignment of error is denied.

18 The second assignment of error is sustained, in part.

19 **FOURTH ASSIGNMENT OF ERROR**

20 Petitioners argue that the county improperly evaluated
21 the environmental, economic, social and energy (EESE)
22 consequences, as required by OAR 660-04-020(2)(c), by not
23 considering the impact of the proposed use.⁸ Petitioners

⁸OAR 660-04-020(2)(c) states:

"The long-term environmental, economic, social and energy
consequences resulting from the use at the proposed site with

1 assert that the county "is required to consider the impacts
2 and consequences of the proposed use on the exception site
3 against other areas also requiring an exception." Petition
4 for Review 20.

5 There is no dispute that alternative sites were
6 described at the local level, as the county referred to the
7 "Alternative Sites Analysis" and other potential sites.
8 However, petitioners have failed to assert that locating the
9 proposed use at any of the alternative sites would produce
10 significantly fewer impacts; nor do petitioners identify
11 where such an assertion was made at the local level or cite
12 facts in the record supporting such an assertion. We
13 therefore agree with the county and intervenors that under
14 OAR 660-04-020(2)(c), the county was not required to
15 evaluate the ESEE consequences of locating the proposed use
16 at any of the alternative sites. See Pacific Rivers
17 Council, supra, 26 Or LUBA at 347-48.

18 The fourth assignment of error is denied.

19 **FIFTH ASSIGNMENT OF ERROR**

20 Petitioners argue that the challenged decision is not
21 supported by adequate findings demonstrating that the
22 proposed use is compatible with adjacent uses as required by
23 ORS 197.732(1)(c)(D) and OAR 660-04-020(2)(d).

measures designed to reduce adverse impacts are not
significantly more adverse than would typically result from the
same proposal being located in other areas requiring a Goal
exception. * * *

1 OAR 660-04-020(2)(d) requires a finding that:

2 "'The proposed uses are compatible with other
3 adjacent uses or will be so rendered through
4 measures designed to reduce adverse impacts.' The
5 exception shall describe how the proposed use will
6 be rendered compatible with adjacent land uses.
7 The exception shall demonstrate that the proposed
8 use is situated in such a manner as to be
9 compatible with surrounding natural resource and
10 resource management or production practices.
11 'Compatible' is not intended as an absolute term
12 meaning no interference or adverse impacts of any
13 type with adjacent uses."

14 Both ORS 197.732(1)(c)(D) and OAR 660-04-020(2)(d)
15 require the county to adopt findings that: (1) describe the
16 uses adjacent to the proposed exception area; and (2)
17 explain why the proposed use of the exception area is or
18 will be rendered compatible with those uses. Murray v.
19 Marion County, 23 Or LUBA 268, 280-281 (1992); Johnson v.
20 Tillamook County, 16 Or LUBA 855 (1988).

21 The county and intervenors argue that the compatibility
22 standards have been met.⁹ Both rely on the fact that site
23 review will be required in the future for the proposed
24 use.¹⁰ In this respect the challenged decision concludes

⁹Intervenors assert that adjacent properties, even if they contain residences, are zoned for resource use. This assertion misses the point. The requirements of OAR 660-04-020(2)(d) require the uses themselves to be identified, not the zoning.

¹⁰Intervenors contend that a number of the petitioners' properties are not adjacent to the subject 17-acre parcel. The inference that compatibility is only necessary when parcels share a common property line is incorrect. The county development code defines "adjacent" as "[n]ear or close by; may be contiguous, abutting, or adjoining, or separated by a roadway, alley, or natural separation. Same as abutting." LZO 11.030(10).

1 that "[c]onditions of the use will render the use compatible
2 with surrounding uses." Record 30.

3 The county's decision includes nine findings of fact
4 that address surrounding uses. Record 16-17. In addition,
5 the decision includes a paragraph titled "Compatibility of
6 Use with Surrounding Uses." Findings 10 through 12 discuss
7 the surrounding parcels on the north, northwest and east.
8 Although they describe the zoning and indicate whether there
9 are homes present and distances of the homes from the oval
10 track, they do not describe the other uses adjacent to the
11 proposed exception area.¹¹ Intervenors assert that adjacent
12 properties, even if they contain residences, are zoned for
13 resource use. This assertion misses the point. The
14 requirements of OAR 660-04-020(2)(d) require the uses
15 themselves to be identified, not the zoning.

16 In order to comply with OAR 660-04-020(2)(d), the
17 county must identify all of the uses on adjacent property,
18 not just the residential uses, zoning or ownership of the
19 property. This is true for all adjacent properties,
20 including the use of the woodlot to the south.

21 The county has identified noise, dust, alcohol use and
22 traffic as potential compatibility problems. The county

¹¹Finding 25 states that the "immediate surrounding uses are forest resource to the north, east and south." Record 18. Findings 11 and 12 identify property to the northwest and east as containing residences. The county must make clear whether other uses on the adjacent property are resource or residential, and whether those uses are compatible with the proposed use.

1 must address how each of these potential conflicts will be
2 made compatible with adjacent uses. It must also determine
3 if the proposed use may conflict with the adjacent resource
4 use.¹² After the county identifies the existing adjacent
5 uses, the county must explain why the proposed use of the
6 exception area is or will be rendered compatible with those
7 uses.¹³

8 The fifth assignment of error is sustained.

9 The county's decision is remanded.

¹²For example, the county has not discussed whether the proposed use could create enhanced fire danger that is incompatible with resource uses.

¹³We note that the county may find that it is feasible to satisfy an applicable approval standard then impose conditions necessary to ensure that the standard will be satisfied. Thomas v. Wasco County, ___ Or LUBA ___ (LUBA No. 95-098 January 12, 1996).